

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.91 OF 1999

1. Hanmant Sidramappa Solapure
R/o.Nagansure, Tal.Akkalkot,
Dist.Solapur.

2. Kum. Usha Girmallayya Vastrad
R/o.Nagansure, Tal.Akkalkot,
Dist.Solapur.

... Applicants/
(Ori.Accd.No.2 & 4)

V/s.

The State of Maharashtra

... Respondent

Shri.P.R. Arjunwadkar for the Applicants.
Ms.S.V. Gajre APP for the State.

CORAM : V.M. KANADE, J.

DATED : 12/01/2007

ORAL JUDGMENT:-

1. Heard learned counsel for the applicants and learned APP
for the State.

2. This criminal revision application is directed against
judgment and order passed by the Sessions Judge, Solapur allowing
appeal which was filed by the present applicants and having set

aside conviction and sentence and thereafter further directing the re-trial by remanding case against present applicants.

3. Brief facts which are relevant for the purpose of deciding this application are as under:-

Private complaint was filed by the complainant Ramchandra Kallappa Malgonda, in the Court of Judicial Magistrate First Class, Solapur against the present applicants and two others alleging that they had committed an offence U/s.420, 468, 447, 406 r/w 34 of IPC. One H.G. Parchande High School was established by the Mallinath Shikshan Prasarak Mandal and the complainant was president of said society for a long time. It was alleged that accused No.1 was Headmaster of said High School, accused No.2 was President and Chairman of the Said Society, accused No.3 was the Sr.Clerk and accused No.4 was a teacher of that School. It was alleged that the applicant No.2 was appointed as a teacher of Zilla Parishad, Solapur in the year 1988 and therefore, she left the service of High School established by Mallinath Shikshan Prasarak Mandal and joined the school established by Zilla Parishad. It was alleged

that though she had taken salary from Zilla Parishad, Solapur from 29/09/1988 to 13/07/1989, accused prepared salary bill of applicant No.2 from the School established by Mallinath Shikshan Prasarak Mandal and misappropriated amount of Rs.16,000/- and therefore, cheated Zilla Parishad and Education Department.

4. Complaint was referred to the Police Sub-Inspector Mandrup for investigation for 156(3) of Code of Civil Procedure and thereafter, charge was framed for the offences punishable under various sections of IPC. Trial Court convicted the accused. Against the order of conviction, accused preferred an appeal in the Sessions Court, Solapur. Sessions Court, Solapur after appreciating the evidence on record came to the conclusion that prosecution had not established or proved the offence against the accused. Sessions Court further came to the conclusion that certain witnesses ought to have been examined by the prosecution and further observed that those witnesses have not been examined when it was possible that some material could have been found against the accused. Sessions

Court, therefore, came to the conclusion that merely because trial court failed to recall witnesses, benefit should not be given to the accused and therefore, felt that direction should be given to the Magistrate to recall the witnesses which were examined on behalf of complainant and also to give an opportunity to legal representatives of the deceased to lead any additional evidence.

5. Learned counsel for the applicants submitted that order passed by the Sessions Court, Solapur was patently illegal and there was no occasion to remand the matter to the Trial Court by giving further opportunity to the legal representatives of the complainant to adduce additional evidence. It is an admitted position that during the course of trial original complainant had expired. Two of the accused had also expired. Amount which was allegedly mis-appropriated was re-deposited by accused No.4. He submitted that taking into consideration all these circumstances, there is no reason to remand the matter for re-trial. This submission of learned counsel will have to be accepted. Lower Appellate Court after having come to the

conclusion that there was no material on record to convict the accused passed an order of acquittal. There was no reason to remand the case for recalling the witnesses and giving further opportunity to the prosecution to lead additional evidence. The submission made by the learned counsel for the applicants will have to be accepted that order passed by the Sessions Court amounted to giving an opportunity to the prosecution to fill up the lacunae after evidence which has been appreciated by the Trial Court. I am therefore, satisfied that the order passed by the Lower Appellate Court is patently illegal and is clearly unwarranted. Order of remand, therefore passed by the Sessions Court, Solapur in Criminal Appeal No.55/1997 dated 22nd March, 1999 remanding the matter by allowing appeal is set aside. Criminal Revision Application is made absolute in above terms.

V.M. KANADE J.